S.B. CIVIL WRIT PETITION NO.307/2005

Smt. Santi Kothari vs. State of Rajasthan and others.

Date : 17.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S.G. Ojha, for the petitioner.

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Heard learned counsel for the petitioner.

The grievance of the petitioner is that the respondent Bank had issued notice to the petitioner on 9.12.2004 (Annex.P/2) by which the respondent Bank informed the petitioner that since the petitioner failed to discharge her liability even after expiry of 60 days of notice period, therefore, the respondent bank by exercising the powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the “Act of 2002”) shall take possession of the secured assets.

According to learned counsel for the petitioner, the respondent Bank has already initiated proceedings for recovery of debt before the Debt Recovery Tribunal, Jaipur by filing petition for which summons (Annex.P/1) have already been issued by the Tribunal. Despite these proceedings, the respondent Bank has started the proceedings under the Act of 2002.

According to learned counsel for the petitioner, Section 19 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 (for short the “Act of

1993") stands amended as sub-section (1) to Section 19 has been inserted by the amendment by which it is provided that the financial institutions may withdraw their petition from the Debt Recovery Tribunal to enforce their rights under the Act of 2002 or the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004.

According to learned counsel for the petitioner, the respondent Bank has not withdrawn the proceedings before the Debt Recovery Tribunal, therefore, the bank's action to proceed under the Act of 2002 is illegal.

I have considered the submissions of learned counsel for the petitioner.

Learned counsel for the petitioner could not point out any provision of law from both the Acts as well as the Ordinance of 2004 by which any restriction has been put for simultaneous proceedings under the two Acts.

In view of the above, I do not find any merit in this this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya